

ASSET FORFEITURE REVISIONS

2020 GENERAL SESSION

STATE OF UTAH

LONG TITLE

General Description:

This bill makes changes to asset forfeiture statutes.

Highlighted Provisions:

This bill:

- ▶ defines when property becomes "property held for forfeiture;" States precisely when a state court obtains jurisdiction over seized property and when a civil forfeiture action commences;
- ▶ provides law enforcement 30 days to process seized cash or negotiable instruments for evidentiary value;
- ▶ requires the cash or negotiable instrument be deposited into an interest-bearing account;
- ▶ reduces the length of time for law enforcement to present a written request for forfeiture to the prosecutor;
- ▶ requires counties of the third, fourth, fifth, and sixth classes to collaborate with the Attorney General's Office on forfeiture matters;
- ▶ provides the Attorney General with discretion to review any seizure of \$10,000 or more.
- ▶ clarifies that property may be transferred to a federal agency if the property was already named in a federal criminal indictment or information at the time of seizure;
- ▶ permits grants to any agency involved in forfeiture activities whether or not that agency contributed to the State Asset Forfeiture Grant Fund; and
- ▶ requires certification of asset forfeiture specialists by Peace Officer Standards and Training.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

33 **Utah Code Sections Affected:**

34 AMENDS:

- 35 **24-1-102**, as last amended by Laws of Utah 2017, Chapters 285 and 362
- 36 **24-1-103**, as enacted by Laws of Utah 2013, Chapter 394
- 37 **24-2-103**, as last amended by Laws of Utah 2017, Chapter 362
- 38 **24-3-102**, as enacted by Laws of Utah 2013, Chapter 394
- 39 **24-3-103**, as last amended by Laws of Utah 2017, Chapters 285 and 334
- 40 **24-4-103**, as enacted by Laws of Utah 2013, Chapter 394
- 41 **24-4-104**, as last amended by Laws of Utah 2017, Chapter 362
- 42 **24-4-108**, as enacted by Laws of Utah 2013, Chapter 394
- 43 **24-4-114**, as last amended by Laws of Utah 2015, Chapter 134
- 44 **24-4-117**, as last amended by Laws of Utah 2015, Chapter 134
- 45 **24-4-118**, as last amended by Laws of Utah 2017, Chapter 303
- 46 **58-37-8**, as last amended by Laws of Utah 2019, Chapter 58

47 ENACTS:

- 48 **24-4-103.5**, Utah Code Annotated 1953
- 49 **53-13-110.5**, Utah Code Annotated 1953



51 *Be it enacted by the Legislature of the state of Utah:*

52 Section 1. Section **24-1-102** is amended to read:

53 **24-1-102. Definitions.**

54 As used in this title:

55 (1) "Account" means the Criminal Forfeiture Restricted Account created in Section
56 24-4-116.

57 (2) (a) "Acquitted" means a finding by a jury or a judge at trial that a claimant is not
58 guilty.

59 (b) "Acquitted" does not include:

- 60 (i) a verdict of guilty on a lesser or reduced charge;
- 61 (ii) a plea of guilty to a lesser or reduced charge; or
- 62 (iii) dismissal of a charge as a result of a negotiated plea agreement.

63 (3) "Agency" means any agency of municipal, county, or state government, including

64 law enforcement agencies, law enforcement personnel, and multijurisdictional task forces.

65 (4) "Claimant" means any:

66 (a) owner of property as defined in this section;

67 (b) interest holder as defined in this section; or

68 (c) person or entity who asserts a claim to any property seized for forfeiture under this
69 title.

70 (5) "Commission" means the Utah Commission on Criminal and Juvenile Justice.

71 (6) "Complaint" means a civil in rem complaint seeking the forfeiture of any real or
72 personal property under this title.

73 (7) (a) "Computer" means an electronic, magnetic, optical, electrochemical, or other
74 high-speed data processing device that performs logical, arithmetic, and storage functions, and
75 includes any device that is used for the storage of digital or electronic files, flash memory,
76 software, or other electronic information.

77 (b) "Computer" does not mean a computer server of an Internet or an electronic service
78 provider, or the service provider's employee, if used for the purpose of compliance with
79 obligations pursuant to 18 U.S.C. 2258A.

80 (8) "Constructive seizure" means a seizure of property where the property is left in the
81 control of the owner and the seizing agency posts the property with a notice of intent to seek
82 forfeiture.

83 (9) (a) "Contraband" means any property, item, or substance that is unlawful to
84 produce or to possess under state or federal law.

85 (b) All controlled substances that are possessed, transferred, distributed, or offered for
86 distribution in violation of Title 58, Chapter 37, Utah Controlled Substances Act, are
87 contraband.

88 (c) A computer is contraband if it:

89 (i) contains or houses child pornography, or is used to create, download, transfer,
90 upload to a storage account, or store any electronic or digital files containing child
91 pornography; or

92 (ii) contains the personal identifying information of another person, as defined in
93 Subsection 76-6-1102(1), whether that person is alive or deceased, and the personal identifying
94 information has been used to create false or fraudulent identification documents or financial

95 transaction cards in violation of Title 76, Chapter 6, Part 5, Fraud.

96 (10) "Innocent owner" means a claimant who:

97 (a) held an ownership interest in property at the time the conduct subjecting the
98 property to forfeiture occurred, and:

99 (i) did not have actual knowledge of the conduct subjecting the property to forfeiture;

100 or

101 (ii) upon learning of the conduct subjecting the property to forfeiture, took reasonable
102 steps to prohibit the illegal use of the property; or

103 (b) acquired an ownership interest in the property and had no knowledge that the illegal
104 conduct subjecting the property to forfeiture had occurred or that the property had been seized
105 for forfeiture, and:

106 (i) acquired the property in a bona fide transaction for value;

107 (ii) was a person, including a minor child, who acquired an interest in the property
108 through probate or inheritance; or

109 (iii) was a spouse who acquired an interest in property through dissolution of marriage
110 or by operation of law.

111 (11) (a) "Interest holder" means a secured party as defined in Section 70A-9a-102, a
112 party with a right-of-offset, a mortgagee, lien creditor, or the beneficiary of a security interest
113 or encumbrance pertaining to an interest in property, whose interest would be perfected against
114 a good faith purchaser for value.

115 (b) "Interest holder" does not mean a person who holds property for the benefit of or as
116 an agent or nominee for another person, or who is not in substantial compliance with any
117 statute requiring an interest in property to be recorded or reflected in public records in order to
118 perfect the interest against a good faith purchaser for value.

119 (12) "Known address" means any address provided by a claimant to the agency at the
120 time the property was seized, or the claimant's most recent address on record with a
121 governmental entity if no address was provided at the time of the seizure.

122 (13) "Legal costs" means the costs and expenses incurred by a party in a forfeiture
123 action.

124 (14) "Legislative body" means:

125 (a) (i) the Legislature, county commission, county council, city commission, city

126 council, or town council that has fiscal oversight and budgetary approval authority over an
127 agency; or

128 (ii) the agency's governing political subdivision; or

129 (b) the lead governmental entity of a multijurisdictional task force, as designated in a
130 memorandum of understanding executed by the agencies participating in the task force.

131 (15) "Multijurisdictional task force" means a law enforcement task force or other
132 agency comprised of persons who are employed by or acting under the authority of different
133 governmental entities, including federal, state, county or municipal governments, or any
134 combination of these agencies.

135 (16) "Owner" means any person or entity, other than an interest holder, that possesses a
136 bona fide legal or equitable interest in real or personal property.

137 (17) (a) "Proceeds" means:

138 (i) property of any kind that is obtained directly or indirectly as a result of the
139 commission of an offense that gives rise to forfeiture; or

140 (ii) any property acquired directly or indirectly from, produced through, realized
141 through, or caused by an act or omission regarding property under Subsection (17)(a)(i).

142 (b) "Proceeds" includes any property of any kind without reduction for expenses
143 incurred in the acquisition, maintenance, or production of that property, or any other purpose
144 regarding property under Subsection (17)(a)(i).

145 (c) "Proceeds" is not limited to the net gain or profit realized from the offense that
146 gives rise to forfeiture.

147 (18) "Program" means the State Asset Forfeiture Grant Program established in Section
148 24-4-117.

149 (19) "Property" means all property, whether real or personal, tangible or intangible, but
150 does not include contraband.

151 (20) "Property held for forfeiture" means property over which a state court has acquired
152 jurisdiction through the filing of a state civil forfeiture complaint, or the filing of a state
153 criminal complaint, information, or indictment in which the property is identified for forfeiture.

154 [~~20~~] (21) "Prosecuting attorney" means:

155 (a) the attorney general and any assistant attorney general;

156 (b) any district attorney or deputy district attorney;

157 (c) any county attorney or assistant county attorney; and
 158 (d) any other attorney authorized to commence an action on behalf of the state under
 159 this title.

160 [~~(21)~~] (22) "Public interest use" means a:

161 (a) use by a government agency as determined by the legislative body of the agency's
 162 jurisdiction; or

163 (b) donation of the property to a nonprofit charity registered with the state.

164 [~~(22)~~] (23) "Real property" means land and includes any building, fixture,
 165 improvement, appurtenance, structure, or other development that is affixed permanently to
 166 land.

167 Section 2. Section **24-1-103** is amended to read:

168 **24-1-103. Jurisdiction and venue.**

169 (1) A state district court has jurisdiction over any action filed in accordance with this
 170 title regarding:

171 (a) all interests in property if the property is within this state at the time the action is
 172 filed; and

173 (b) a claimant's interests in the property, if the claimant is subject to the personal
 174 jurisdiction of the district court.

175 (2) A state district court acquires jurisdiction over the property and interests in the
 176 property upon the filing of a state civil forfeiture complaint, or the filing of a state criminal
 177 complaint, information, or indictment in which the property is identified for forfeiture.

178 [~~(2)~~] (3) (a) In addition to the venue provided for under Title 78B, Chapter 3, Part 3,
 179 Place of Trial -- Venue, or any other provisions of law, a proceeding for forfeiture under this
 180 title may be maintained in the judicial district in which:

181 (i) any part of the property is found; or

182 (ii) a civil or criminal action could be maintained against a claimant for the conduct
 183 alleged to constitute grounds for forfeiture.

184 (b) A claimant may obtain a change of venue under Section 78B-3-309.

185 Section 3. Section **24-2-103** is amended to read:

186 **24-2-103. Property seized by a peace officer -- Custody and control of property.**

187 (1) (a) When property other than suspected contraband is seized by a peace officer, the

188 peace officer or the officer's employing agency shall provide a receipt to the person from whom
189 the property was seized.

190 (b) The receipt shall describe the:

191 (i) property seized;

192 (ii) date of seizure; and

193 (iii) name and contact information of the officer's employing agency.

194 (c) In addition to the receipt, the person from whom the property was seized for
195 forfeiture shall be provided with information regarding the forfeiture process, including:

196 (i) important time periods in the forfeiture process;

197 (ii) what happens to the property upon conviction or acquittal; and

198 (iii) how to make a claim for the return of the property.

199 (d) A copy of the receipt shall be maintained by the agency.

200 (e) If custody of the property is transferred to another agency, a copy of the receipt
201 under Subsection (1)(a) shall be provided with the property.

202 (2) The agency responsible for maintaining the property shall:

203 (a) hold all seized property in safe custody until it can be disposed of as provided in
204 this title; and

205 (b) maintain a record of the property that includes:

206 (i) a detailed inventory of all property seized;

207 (ii) the name of the person from whom it was seized; and

208 (iii) the agency's case number.

209 (3) Property seized under this title is not recoverable by replevin[~~, but is considered~~].

210 (4) Property seized under this title shall be maintained in the agency's physical custody
211 subject [only] to the orders of the court or the official having jurisdiction.

212 [~~(4)~~] (5) All controlled substances or other contraband that is seized by a peace officer
213 may be processed for evidentiary or investigative purposes, including sampling or other
214 preservation procedure prior to disposal or destruction.

215 [~~(5)~~] (a) An agency shall [~~deposit~~] have 30 days to process seized property in the form
216 of cash or other readily negotiable instruments for evidentiary or investigative purposes as
217 described in Subsection (4). At the conclusion of 30 days, the agency shall deposit the property
218 into a separate, restricted, interest-bearing account maintained by the agency solely for the

219 purpose of managing and protecting the property from commingling, loss, or devaluation.

220 (b) A district court may extend the 30 day period upon petition of the prosecutor
221 demonstrating the cash or other readily negotiable instruments should be maintained in their
222 original forms as evidence for a criminal prosecution, or for other good cause.

223 ~~[(b)]~~ (c) Each agency shall have written policies for the identification, tracking,
224 management, and safekeeping of seized property, which shall include a prohibition against the
225 transfer, sale, or auction of seized property to any employee of the agency.

226 ~~[(6) If a peace officer or the officer's employing agency records an interview of a minor~~
227 ~~child during an investigation of a violation of Section 76-5-402.1, 76-5-402.3, 76-5-403.1, or~~
228 ~~76-5-404.1, the agency shall retain a copy of the recording for 18 years following the date of~~
229 ~~the last recording unless the prosecuting attorney requests in writing that the recording be~~
230 ~~retained for an additional period of time.]~~

231 ~~[(7)]~~ (6) Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction
232 Information Act, governs the disposition of property held by a pawn or secondhand business in
233 the course of its business.

234 Section 4. Section **24-3-102** is amended to read:

235 **24-3-102. Property received in evidence.**

236 (1) When property is ~~[received in evidence by the]~~ admitted into evidence during a
237 court proceeding, the clerk of the court shall either retain the property or ~~[the clerk shall]~~ return
238 the property to the custody of the peace officer or the agency ~~[employing the peace officer]~~ that
239 had custody of the property before the property was admitted into evidence.

240 (2) The property shall be retained ~~[by the clerk or the officer or, the officer's agency]~~ at
241 the discretion of the prosecutor, or until all direct appeals and retrials are final, at which time
242 the property shall be disposed of in accordance with this title.

243 (3) If the prosecuting attorney considers it necessary to retain control over the evidence
244 in anticipation of possible collateral attacks upon the judgment or for use in a potential
245 prosecution, the prosecutor may decline to authorize the disposal of the property under this
246 chapter.

247 Section 5. Section **24-3-103** is amended to read:

248 **24-3-103. Property no longer needed as evidence -- Disposition of property.**

249 (1) When the prosecuting attorney determines that property no longer needs to be held

250 as evidence, the prosecuting attorney may:

251 (a) petition the court to apply any property that is money towards restitution, fines,
252 fees, or monetary judgments owed by the owner of the property;

253 (b) petition the court for an order transferring ownership of any weapons to the seizing
254 agency for the agency's use and disposal in accordance with applicable law, if the owner:

255 (i) is the person who committed the crime for which the weapon was seized; or

256 (ii) may not lawfully possess the weapon; or

257 (c) notify the agency that has possession of the property that the property may be:

258 (i) returned to the rightful owner, if the rightful owner may lawfully possess it; or

259 (ii) disposed of or destroyed, if the property is contraband.

260 (2) The agency shall exercise due diligence in attempting to notify the rightful owner of
261 the property to advise the owner that the property is to be returned.

262 (3) For a computer determined to be contraband, a court may order the reasonable
263 extraction and return of specifically described personal digital data to the rightful owner. The
264 law enforcement agency shall determine a reasonable cost to provide the data, which shall be
265 paid by the owner at the time of the request to extract the data.

266 (4) (a) Before the agency may release property to a person claiming ownership of the
267 property, the person shall establish in accordance with Subsection (4)(b) that the person:

268 (i) is the rightful owner; and

269 (ii) may lawfully possess the property.

270 (b) The person shall establish ownership under Subsection (4)(a) by providing to the
271 agency:

272 (i) identifying proof or documentation of ownership of the property; or

273 (ii) a notarized statement, if proof or documentation is not available.

274 (5) (a) When property is returned to the owner, a receipt listing in detail the property
275 returned shall be signed by the owner.

276 (b) The receipt shall be retained by the agency and a copy shall be provided to the
277 owner.

278 (6) (a) Except as provided in Subsection (6)(b), if the agency is unable to locate the
279 rightful owner of the property or if the rightful owner is not entitled to lawfully possess the
280 property, the agency may:

- 281 (i) apply the property to a public interest use;
- 282 (ii) sell the property at public auction and apply the proceeds of the sale to a public
283 interest use; or
- 284 (iii) destroy the property if the property is unfit for a public interest use or for sale.
- 285 (b) If the property described in Subsection (6)(a) is a firearm, the agency shall dispose
286 of the firearm in accordance with Section 24-3-103.5.

287 (7) Before applying the property or the proceeds from the sale of the property to a
288 public interest use, the agency shall obtain from the legislative body of its jurisdiction:

- 289 (a) permission to apply the property or the proceeds to public interest use; and
- 290 (b) the designation and approval of the public interest use of the property or the
291 proceeds.

292 Section 6. Section **24-4-103** is amended to read:

293 **24-4-103. Initiating forfeiture proceedings -- Notice of intent to seek forfeiture.**

294 (1) (a) Within 30 days from the date that property is seized, an agency seeking to forfeit
295 property shall serve a notice of intent to seek forfeiture upon any claimants known to the
296 agency.

297 (b) The notice of intent to seek forfeiture shall describe the:

- 298 (i) date of the seizure;
- 299 (ii) property seized;
- 300 (iii) claimant's rights and obligations under this chapter, including the availability of
301 hardship relief in appropriate circumstances; and
- 302 (iv) statutory basis for the forfeiture, including the judicial proceedings by which
303 property may be forfeited under this chapter.

304 (c) The notice of intent to seek forfeiture shall be served by:

- 305 (i) certified mail, return receipt requested, to the claimant's known address; or
- 306 (ii) personal service.

307 (d) The court may void any forfeiture made without notice under Subsection (1)(a),
308 unless the agency demonstrates:

- 309 (i) good cause for the failure to give notice to the claimant; or
- 310 (ii) that the claimant had actual notice of the seizure.

311 (2) (a) Once the agency has served each claimant with a notice of intent to seek

312 forfeiture, but no later than [60] 45 days from the date that property is seized, the agency shall
313 present a written request for forfeiture to the prosecuting attorney.

314 (b) The written request shall:

315 (i) describe the property to be forfeited; and

316 (ii) include a copy of all reports, supporting documents, and other evidence necessary
317 for the prosecuting attorney to determine the legal sufficiency for filing a forfeiture action.

318 (c) The prosecutor shall review the request and inform the investigating agency with a
319 written declination or acceptance within 60 days of the seizure.

320 (d) In counties of the third, fourth, fifth, and sixth class, the county attorney shall
321 collaborate with the attorney general's office. If the case is declined by a local prosecutor, the
322 attorney general may review de novo any seizure of \$10,000 or more within the time periods
323 established in this subsection and Section 24-4-103.5.

324 Section 7. Section **24-4-103.5** is enacted to read:

325 **24-4-103.5. Mandatory return of seized property.**

326 The law enforcement agency shall promptly return seized property, and the prosecuting
327 attorney may take no further action to effect the forfeiture of the property, unless the
328 prosecuting attorney:

329 (1) files a civil forfeiture complaint under Section 24-4-104 within 75 days after the
330 property is seized, unless otherwise extended by the court;

331 (2) files a criminal indictment or information under Subsection 24-4-105(2) within the
332 period established as the statute of limitations for the offense;

333 (3) obtains a restraining order under Subsection 24-4-105(3); or

334 (4) files a petition under Subsection 24-4-114(1).

335 Section 8. Section **24-4-104** is amended to read:

336 **24-4-104. Civil forfeiture procedure.**

337 ~~[(1)(a) The law enforcement agency shall promptly return seized property, and the~~
338 ~~prosecuting attorney may take no further action to effect the forfeiture of the property, unless~~
339 ~~within 75 days after the property is seized the prosecuting attorney:]~~

340 ~~[(i) files a criminal indictment or information under Subsection 24-4-105(2);]~~

341 ~~[(ii) obtains a restraining order under Subsection 24-4-105(3);]~~

342 ~~[(iii) files a petition under Subsection 24-4-114(1); or]~~

343 ~~[(iv) files a civil forfeiture complaint.]~~
344 ~~[(b)]~~ (1) A civil forfeiture action is commenced by the filing of a complaint. The
345 complaint ~~[for civil forfeiture]~~ shall describe with reasonable particularity the:
346 ~~[(i)]~~ (a) property that is the subject of the forfeiture proceeding;
347 ~~[(ii)]~~ (b) date and place of seizure; and
348 ~~[(iii)]~~ (c) factual allegations that constitute a basis for forfeiture.
349 (2) (a) ~~[After]~~ Within 30 days of the date a complaint is filed, the prosecuting attorney
350 shall serve a copy of the complaint and summons upon each claimant known to the prosecuting
351 attorney ~~[within 30 days]~~.
352 (b) The prosecuting attorney is not required to serve a copy of the complaint or the
353 summons upon any claimant who has disclaimed, in writing, an ownership interest in the
354 seized property.
355 (c) Service of the complaint and summons shall be by:
356 (i) personal service;
357 (ii) certified mail, return receipt requested, to the claimant's known address; or
358 (iii) service by publication, if the prosecuting attorney demonstrates to the court that
359 service cannot reasonably be made by personal service or certified mail.
360 (d) Service by publication shall be by publication of two notices, in two successive
361 weeks, of the forfeiture proceeding:
362 (i) in a newspaper of general circulation in the county in which the seizure occurred;
363 and
364 (ii) on Utah's Public Legal Notice Website established in Subsection 45-1-101(2)(b).
365 (e) Service is effective upon the earlier of:
366 (i) personal service;
367 (ii) mailing of a written notice; or
368 (iii) publication.
369 (f) Upon motion of the prosecuting attorney and a showing of good cause, the court
370 may extend the period to complete service under this section for an additional 60 days.
371 (3) (a) ~~[In any case where the prosecuting attorney files a complaint for forfeiture, a]~~ A
372 claimant may file an answer to ~~[the]~~ a forfeiture complaint within 30 days after the complaint is
373 served upon the claimant as provided in Subsection (2)(a).

374 (b) A claimant may file an answer to a complaint for civil forfeiture without posting
375 bond with respect to the property subject to forfeiture.

376 ~~[(b) The answer shall be filed within 30 days after the complaint is served upon the~~
377 ~~claimant as provided in Subsection (2)(b).]~~

378 (c) When the property subject to forfeiture is valued at less than \$10,000, the agency
379 that has custody of the property shall return the property to the claimant if:

380 (i) (A) the prosecuting attorney has filed a forfeiture complaint, and the claimant has
381 filed an answer through an attorney or pro se, in accordance with Subsections (3)(a) and (b);
382 and

383 (B) the prosecuting attorney has not filed an information or indictment for criminal
384 conduct giving rise to the forfeiture within 60 days after the date that service of the forfeiture
385 complaint on the claimant was completed, or has not timely moved a court of competent
386 jurisdiction and demonstrated reasonable cause for an extension of time to file such an
387 information or indictment; or

388 (ii) the information or indictment for criminal conduct giving rise to the forfeiture was
389 dismissed and the prosecuting attorney has not refiled the information or indictment within
390 seven days of the dismissal.

391 (d) The return of property to the claimant under Subsection (3)(c) does not include any
392 expenses, costs, or attorney fees.

393 (e) The time limitations in Subsection (3)(c)(i) may be extended for up to 15 days if a
394 claimant timely seeks to recover possession of seized property pursuant to Subsection
395 24-4-107(8), but shall resume immediately upon the seizing agency's or prosecuting attorney's
396 timely denial of the claim on the merits.

397 (4) Except as otherwise provided in this chapter, forfeiture proceedings are governed
398 by the Utah Rules of Civil Procedure.

399 (5) The court shall take all reasonable steps to expedite civil forfeiture proceedings and
400 shall give these proceedings the same priority as is given to criminal cases.

401 ~~[(6) In all suits or actions brought under this section for the civil forfeiture of any~~
402 ~~property, the burden of proof is on the prosecuting attorney to establish by clear and convincing~~
403 ~~evidence that the claimant engaged in conduct giving rise to the forfeiture.]~~

404 ~~[(7) A claimant may file an answer to a complaint for civil forfeiture without posting~~

405 ~~bond with respect to the property subject to forfeiture.]~~

406 ~~[(8)]~~ (6) Property is subject to forfeiture under this chapter if the prosecuting attorney
407 establishes by clear and convincing evidence that:

408 (a) the claimant ~~[has]~~:

409 (i) engaged in or was responsible for conduct giving rise to forfeiture;

410 ~~[(b) the property was acquired by the claimant during that portion of the conduct that~~
411 ~~gives rise to forfeiture, or within a reasonable time after that conduct is committed; and]~~

412 (ii) knew of the conduct giving rise to the forfeiture, and allowed the property to be
413 used in furtherance of the conduct; or

414 (iii) acquired the property during that portion of the conduct that gave rise to the
415 forfeiture, or within a reasonable time after that conduct was committed; and

416 ~~[(c)]~~ (b) there is no likely source for the purchase or acquisition of the property other
417 than the conduct that ~~[gives]~~ gave rise to the forfeiture.

418 ~~[(9)]~~ (7) A finding by the court that property is the proceeds of conduct giving rise to
419 forfeiture does not require proof that the property was the proceeds of any particular exchange
420 or transaction.

421 ~~[(10) If the prosecutor establishes that the property is subject to forfeiture, but the~~
422 ~~claimant is subsequently criminally charged with the conduct giving rise to the forfeiture and is~~
423 ~~acquitted of that charge on the merits:]~~

424 (8) If the claimant is acquitted of criminal charges based on the conduct giving rise to a
425 civil forfeiture after the prosecutor has established that the property is subject to forfeiture:

426 (a) the property subject to the forfeiture or the open market value of the property, if the
427 property has been disposed of under Subsection 24-4-108(13), shall be returned to the
428 claimant; and

429 (b) any payments required under this chapter regarding the costs of holding the
430 property shall be paid to the claimant.

431 Section 9. Section **24-4-108** is amended to read:

432 **24-4-108. Release of property held for forfeiture on certain grounds.**

433 (1) After the seizing agency gives notice that the state intends to hold the property ~~[is~~
434 ~~to be held]~~ for forfeiture, a person or entity may not alienate, convey, sequester, or attach that
435 property until the court issues a final order of dismissal or an order of forfeiture regarding the

436 property.

437 (2) The seizing agency or the prosecuting attorney may authorize the release of
438 property held for forfeiture to a claimant if retention of actual custody is unnecessary.

439 (3) With the consent of a court of competent jurisdiction, the prosecuting attorney may
440 discontinue forfeiture proceedings and transfer the ~~[action]~~ property to another state or federal
441 agency that has initiated forfeiture proceedings involving the same property.

442 (4) Property held for forfeiture is considered to be in the custody of the district court
443 and subject only to:

444 (a) the orders and decrees of the court having jurisdiction over the property or the
445 forfeiture proceedings; and

446 (b) the acts of the agency that possesses the property or the prosecuting attorney
447 pursuant to this chapter.

448 (5) (a) A claimant may obtain release of property held for forfeiture by posting with the
449 district court a surety bond or cash in an amount equal to the current fair market value of the
450 property as determined by the court or by the parties' stipulation.

451 (b) The district court may refuse to order the release of the property if:

452 (i) the bond tendered is inadequate;

453 (ii) the property is contraband or is retained as evidence; or

454 (iii) the property is particularly altered or designed for use in conduct giving cause for
455 forfeiture.

456 (c) If a surety bond or cash is posted and the court later determines that the property is
457 subject to forfeiture, the court shall order the forfeiture of the surety bond or cash in lieu of the
458 property.

459 (6) A claimant is entitled to the immediate release of property held for forfeiture
460 pending the final determination of forfeiture if:

461 (a) the claimant had a possessory interest in the property at the time of seizure;

462 (b) continued possession by the agency or the state pending the final disposition of the
463 forfeiture proceedings will cause substantial hardship to the claimant, such as:

464 (i) preventing the functioning of a legitimate business;

465 (ii) preventing any individual from working;

466 (iii) preventing any child from attending elementary or secondary school;

- 467 (iv) preventing or hindering any person from receiving necessary medical care;
468 (v) hindering the care of an elderly or disabled dependent child or adult;
469 (vi) leaving any individual homeless; or
470 (vii) any other condition that the court determines causes a substantial hardship;
- 471 (c) the hardship from the continued possession of the property by the agency outweighs
472 the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is
473 returned to the claimant during the pendency of the proceeding; and
- 474 (d) determination of substantial hardship under this Subsection (6) is based upon the
475 property's use prior to the seizure.
- 476 (7) After the seizing agency gives notice ~~[that the]~~ of intent to seek forfeiture of seized
477 property [is to be held for forfeiture], a claimant may file a motion for hardship release:
- 478 (a) in the court in which forfeiture proceedings have commenced; or
479 (b) in any district court having jurisdiction over the property, if forfeiture proceedings
480 have not yet commenced.
- 481 (8) The motion for hardship release shall also be served upon the prosecuting attorney
482 or the seizing agency within 10 days after filing the motion.
- 483 (9) The court shall render a decision on a motion for hardship filed under this section
484 not later than 20 days after the date of filing, or 10 days after service upon the prosecuting
485 attorney or seizing agency, whichever is earlier, unless this period is extended by the agreement
486 of both parties or by the court for good cause shown.
- 487 (10) (a) If the claimant demonstrates substantial hardship pursuant to this section, the
488 court shall order the property immediately released to the claimant pending completion of
489 proceedings by the government to obtain forfeiture of the property.
- 490 (b) The court may place conditions on release of the property as it finds necessary and
491 appropriate to preserve the availability of the property or its equivalent for forfeiture.
- 492 (11) The hardship release under this section does not apply to:
- 493 (a) contraband;
494 (b) currency or other monetary instrument or electronic funds; or
495 (c) property that is likely to be used to commit additional illegal acts if returned to the
496 claimant.
- 497 (12) (a) The court may order property that is held for forfeiture to be sold, as allowed

498 by Subsection (13), leased, rented, or operated to satisfy a specified interest of any claimant, or
 499 to preserve the interests of any party on motion of that party.

500 (b) The court may enter orders under Subsection (12)(a) after written notice to persons
 501 known to have an interest in the property, and after an opportunity for a hearing.

502 (13) (a) A sale may be ordered under Subsection (12) when the property is liable to
 503 perish, waste, or be significantly reduced in value, or when the expenses of maintaining the
 504 property are disproportionate to its value.

505 (b) A third party designated by the court shall dispose of the property by commercially
 506 reasonable public sale and distribute the proceeds in the following order of priority:

507 (i) first, for the payment of reasonable expenses incurred in connection with the sale;

508 (ii) second, for the satisfaction of any interests, including those of interest holders, in
 509 the order of their priority as determined by Title 70A, Uniform Commercial Code; and

510 (iii) third, any balance of the proceeds shall be preserved in the actual or constructive
 511 custody of the court, in an interest-bearing account, subject to further proceedings under this
 512 chapter.

513 Section 10. Section **24-4-114** is amended to read:

514 **24-4-114. Transfer and sharing procedures.**

515 (1) ~~[(a)]~~ Seizing agencies or prosecuting attorneys authorized to bring forfeiture
 516 proceedings under this chapter may not directly or indirectly transfer property held for
 517 forfeiture ~~[and not already named in a criminal indictment]~~ to any federal agency or any
 518 governmental entity not created under and subject to state law unless:

519 (a) the property is already named in a federal indictment, information or complaint; or

520 (b) the court enters an order, upon petition of the prosecuting attorney, authorizing the
 521 property to be transferred.

522 ~~[(b)]~~ (2) The court may not enter an order authorizing a transfer under Subsection
 523 ~~(1)[(a)]~~(b) unless:

524 ~~[(+)]~~ (a) the conduct giving rise to the investigation or seizure is interstate in nature
 525 ~~[and]~~ or sufficiently complex to justify the transfer;

526 ~~[(+)]~~ (b) the property may only be forfeited under federal law; or

527 ~~[(+)]~~ (c) pursuing forfeiture under state law would unreasonably burden prosecuting
 528 attorneys or state law enforcement agencies.

529 ~~[(c)]~~ (3) A petition to transfer property to a federal agency under this section shall
530 include:

- 531 ~~[(i)]~~ (a) a detailed description of the property seized;
532 ~~[(ii)]~~ (b) the location where the property was seized;
533 ~~[(iii)]~~ (c) the date the property was seized;
534 ~~[(iv)]~~ (d) the case number assigned by the seizing law enforcement agency; and
535 ~~[(v)]~~ (e) a declaration that:
536 ~~[(A)]~~ (i) states the basis for relinquishing jurisdiction to a federal agency;
537 ~~[(B)]~~ (ii) contains the names and addresses of any claimants then known; and
538 ~~[(C)]~~ (iii) is signed by the prosecutor.

539 ~~[(d)]~~ (4) The court may not authorize the transfer of property to the federal government
540 ~~[if the transfer would circumvent the protections of the Utah Constitution or of this chapter that~~
541 ~~would otherwise be available to the property owner] except for good cause shown.~~

542 ~~[(c)-(i)]~~ (5) (a) Prior to granting any order to transfer pursuant to this section, the court
543 or the prosecutor shall mail a notice to each address contained in the declaration in order to
544 give any claimant the right to be heard with regard to the transfer ~~[by the mailing of a notice to~~
545 ~~each address contained in the declaration].~~

546 ~~[(ii)]~~ (b) If no claimant objects to the petition to transfer property within 10 days of the
547 mailing of the notice, the court shall issue its order under this section.

548 ~~[(iii)]~~ (c) If the declaration does not include an address for a claimant, the court shall
549 delay its order under this section for 20 days to allow time for the claimant to appear and make
550 an objection.

551 ~~[(f)-(i)]~~ (d) If a claimant contests a petition to transfer property to a federal agency, the
552 court shall promptly set the matter for hearing.

553 ~~[(ii)-(A)]~~ (6) The court shall determine whether the state may relinquish jurisdiction by
554 a standard of preponderance of the evidence.

555 ~~[(B) In making the determination, the court shall consider evidence regarding hardship,~~
556 ~~complexity, judicial and law enforcement resources, and any other matter the court determines~~
557 ~~to be relevant.]~~

558 ~~[(2)]~~ (7) All property, money, or other things of value received by an agency pursuant
559 to federal law, which authorizes the sharing or transfer of all or a portion of forfeited property

560 or the proceeds of the sale of forfeited property to an agency:

561 (a) shall be used in compliance with federal laws and regulations relating to equitable
562 sharing;

563 (b) may be used for those law enforcement purposes specified in Subsection
564 [~~24-4-117(9)~~] 24-4-117(10); and

565 (c) may not be used for those law enforcement purposes prohibited in Subsection
566 [~~24-4-117(10)~~] 24-4-117(11).

567 [(3)] (8) A state or local law enforcement agency awarded any equitable share of
568 property forfeited by the federal government may only use the award money after approval of
569 the use by the agency's legislative body.

570 Section 11. Section **24-4-117** is amended to read:

571 **24-4-117. State Asset Forfeiture Grant Program.**

572 (1) There is created the State Asset Forfeiture Grant Program.

573 (2) The program shall fund crime prevention, crime victim reparations, and law
574 enforcement activities that have the purpose of:

575 (a) deterring crime by depriving criminals of the profits and proceeds of their illegal
576 activities;

577 (b) weakening criminal enterprises by removing the instrumentalities of crime;

578 (c) reducing crimes involving substance abuse by supporting the creation,
579 administration, or operation of drug court programs throughout the state;

580 (d) encouraging cooperation between local, state, and multijurisdictional law
581 enforcement agencies;

582 (e) allowing the costs and expenses of law enforcement to be defrayed by the forfeited
583 proceeds of crime;

584 (f) increasing the equitability and accountability of the use of forfeited property used to
585 assist law enforcement in reducing and preventing crime; and

586 (g) providing aid to victims of criminally injurious conduct, as defined in Section
587 63M-7-502, who may be eligible for assistance under Title 63M, Chapter 7, Part 5, Utah Office
588 for Victims of Crime.

589 (3) (a) When property is forfeited under this chapter and transferred to the account,
590 upon appropriation the commission shall allocate and administer grants to state agencies, local

591 law enforcement agencies, multijurisdictional law enforcement agencies, or political
592 subdivisions of the state in compliance with this section and to further the program purposes
593 under Subsection (2).

594 (b) The commission may retain up to 3% of the annual appropriation from the account
595 to pay for administrative costs incurred by the commission, including salary and benefits,
596 equipment, supplies, or travel costs that are directly related to the administration of the
597 program.

598 (4) Agencies or political subdivisions shall apply for an award from the program by
599 completing and submitting forms specified by the commission.

600 (5) In granting the awards, the commission shall ensure that the amount of each award
601 takes into consideration the:

602 (a) demonstrated needs of the agency;

603 (b) demonstrated ability of the agency to appropriately use the award;

604 (c) degree to which the agency's need is offset through the agency's participation in
605 federal equitable sharing or through other federal and state grant programs; and

606 (d) agency's cooperation with other state and local agencies and task forces.

607 (6) The commission may award grants to any agency engaged in activities associated
608 with Subsection (2) whether or not the agency has contributed to the fund.

609 ~~[(6)]~~ (7) Applying agencies or political subdivisions shall demonstrate compliance with
610 all reporting, training, and policy requirements applicable under this chapter and under Title
611 63M, Chapter 7, Criminal Justice and Substance Abuse, in order to qualify as a potential award
612 recipient.

613 ~~[(7)]~~ (8) (a) Recipient law enforcement agencies may only use award money after
614 approval by the agency's legislative body.

615 (b) The award money is nonlapsing.

616 ~~[(8)]~~ (9) A recipient state agency, local law enforcement agency, multijurisdictional
617 law enforcement agency, or political subdivision shall use awards only for law enforcement
618 purposes as described in this section or for victim reparations as described in Subsection (2)(g),
619 and only as these purposes are specified by the agency or political subdivision in its application
620 for the award.

621 ~~[(9)]~~ (10) Permissible law enforcement purposes for which award money may be used

- 622 include:
- 623 (a) controlled substance interdiction and enforcement activities;
- 624 (b) drug court programs;
- 625 (c) activities calculated to enhance future law enforcement investigations;
- 626 (d) law enforcement training that includes:
- 627 (i) implementation of the Fourth Amendment to the United States Constitution and
- 628 Utah Constitution, Article I, Section 7, and that addresses the protection of the individual's
- 629 right of due process;
- 630 (ii) protection of the rights of innocent property holders; and
- 631 (iii) the Tenth Amendment to the United States Constitution regarding states'
- 632 sovereignty and the states' reserved rights;
- 633 (e) law enforcement or detention facilities;
- 634 (f) law enforcement operations or equipment that are not routine costs or operational
- 635 expenses;
- 636 (g) drug, gang, or crime prevention education programs that are sponsored in whole or
- 637 in part by the law enforcement agency or its legislative body;
- 638 (h) matching funds for other state or federal law enforcement grants; and
- 639 (i) the payment of legal costs, attorney fees, and postjudgment interest in forfeiture
- 640 actions.
- 641 ~~[(10)]~~ (11) Law enforcement purposes for which award money may not be granted or
- 642 used include:
- 643 (a) payment of salaries, retirement benefits, or bonuses to any person;
- 644 (b) payment of expenses not related to law enforcement;
- 645 (c) uses not specified in the agency's award application;
- 646 (d) uses not approved by the agency's legislative body;
- 647 (e) payments, transfers, or pass-through funding to entities other than law enforcement
- 648 agencies; or
- 649 (f) uses, payments, or expenses that are not within the scope of the agency's functions.
- 650 Section 12. Section **24-4-118** is amended to read:
- 651 **24-4-118. Forfeiture reporting requirements.**
- 652 (1) On and after January 1, 2016, every state, county, municipal, or other law

653 enforcement agency shall provide all reasonably available data described in Subsection (5),
654 along with the transfer of any applicable forfeited property:

655 (a) when transferring the forfeited property resulting from the final disposition of any
656 civil or criminal forfeiture matter to the [~~Commission on Criminal and Juvenile Justice~~]
657 commission as required under Subsection 24-4-115(5); or

658 (b) when the agency has been awarded any equitable share of property forfeited by the
659 federal government.

660 (2) The [~~Commission on Criminal and Juvenile Justice~~] commission shall develop a
661 standardized report format that each agency shall use in reporting the data required under this
662 section.

663 (3) The [~~Commission on Criminal and Juvenile Justice~~] commission shall annually, on
664 or before April 30, prepare a summary report of the case data submitted by each agency under
665 Subsection (1) during the prior calendar year.

666 (4) (a) If an agency does not comply with the reporting requirements under this section,
667 the [~~Commission on Criminal and Juvenile Justice~~] commission shall contact the agency and
668 request that the agency comply with the required reporting provisions.

669 (b) If an agency fails to comply with the reporting requirements under this section
670 within 30 days after receiving the request to comply, the [~~Commission on Criminal and~~
671 ~~Juvenile Justice~~] commission shall report the noncompliance to the Utah attorney general, the
672 speaker of the House of Representatives, and the president of the Senate.

673 (5) The data for any civil or criminal forfeiture matter for which final disposition has
674 been made under Subsection (1) shall include:

675 (a) the agency that conducted the seizure;

676 (b) the case number or other identification;

677 (c) the date or dates on which the seizure was conducted;

678 (d) the number of individuals having a known property interest in each seizure of
679 property;

680 (e) the type of property seized;

681 (f) the alleged offense that was the cause for seizure of the property;

682 (g) whether any criminal charges were filed regarding the alleged offense, and if so, the
683 final disposition of each charge, including the conviction, acquittal, or dismissal, or whether

684 action on a charge is pending;

685 (h) the type of enforcement action that resulted in the seizure, including an
686 enforcement stop, a search warrant, or an arrest warrant;

687 (i) whether the forfeiture procedure was civil or criminal;

688 (j) the value of the property seized, including currency and the estimated market value
689 of any tangible property;

690 (k) the final disposition of the matter, including whether final disposition was entered
691 by stipulation of the parties, including the amount of property returned to any claimant, by
692 default, by summary judgment, by jury award, or by guilty plea or verdict in a criminal
693 forfeiture;

694 (l) if the property was forfeited by the federal government, the amount of forfeited
695 money awarded to the agency;

696 (m) the agency's direct costs, expense of reporting under this section, and expenses for
697 obtaining and maintaining the seized property, as described in Subsection 24-4-115(3)(a);

698 (n) the legal costs and attorney fees paid to the prosecuting attorney, as described in
699 Subsection 24-4-115(3)(b); and

700 (o) if the property was transferred to a federal agency or any governmental entity not
701 created under and subject to state law:

702 (i) the date of the transfer;

703 (ii) the name of the federal agency or entity to which the property was transferred;

704 (iii) a reference to which reason under Subsection 24-4-114(1)(a) justified the transfer;

705 (iv) the court or agency where the forfeiture case was heard;

706 (v) the date of the order of transfer of the property; and

707 (vi) the value of the property transferred to the federal agency, including currency and
708 the estimated market value of any tangible property.

709 (6) On and after January 1, 2016, every state, county, municipal, or other law
710 enforcement agency shall annually on or before April 30 submit a report for the prior calendar
711 year to the [~~Commission on Criminal and Juvenile Justice~~] commission which states:

712 (a) whether the agency received an award from the State Asset Forfeiture Grant
713 Program under Section 24-4-117 and, if so, the following information for each award:

714 (i) the amount of the award;

- 715 (ii) the date of the award;
- 716 (iii) how the award was used or is planned to be used; and
- 717 (iv) a statement signed by both the agency's executive officer or designee and by the
718 agency's legal counsel, that:
- 719 (A) the agency has complied with all inventory, policy, and reporting requirements
720 under Section 24-4-117; and
- 721 (B) all awards were used for crime reduction or law enforcement purposes as specified
722 in the application and that the awards were used only upon approval by the agency's legislative
723 body; and
- 724 (b) whether the agency received any property, money, or other things of value pursuant
725 to federal law as described in Subsection 24-4-114(2) and, if so, the following information for
726 each piece of property, money, or other thing of value:
- 727 (i) the case number or other case identification;
- 728 (ii) the value of the award and the property, money, or other things of value received by
729 the agency;
- 730 (iii) the date of the award;
- 731 (iv) the identity of any federal agency involved in the forfeiture;
- 732 (v) how the awarded property has been used or is planned to be used; and
- 733 (vi) a statement signed by both the agency's executive officer or designee and by the
734 agency's legal counsel, that the agency has only used the award for crime reduction or law
735 enforcement purposes authorized under Section 24-4-117, and that the award was used only
736 upon approval by the agency's legislative body.
- 737 (7) In order to participate in the state asset forfeiture grant program, law enforcement
738 agencies shall have at least one employee who has been certified by the Peace Officers
739 Standards and Training Division (POST) as an asset forfeiture specialist through the
740 completion of the POST online asset forfeiture course. The asset forfeiture specialist shall be
741 recertified every 36 months.
- 742 (8) POST shall:
- 743 (a) develop an online asset forfeiture specialist certification course that is available to
744 all law enforcement agencies;
- 745 (b) certify employees who meet all course requirements as asset forfeiture specialists;

746 (c) compile the names of the employees and represented agencies into a report
747 submitted to the commission not later than April 30 of each year;
748 (d) review and update the course each year to comply with any changes to asset
749 forfeiture law; and
750 (e) provide asset forfeiture training to all cadets as a requirement of POST certification.
751 (9) In order to be reimbursed for costs under Subsection 24-4-115(3)(b) a prosecutorial
752 agency shall have at least one employee who has been certified by the Utah Prosecution
753 Council as an asset forfeiture specialist through the completion of an online course.
754 (10) The Utah Prosecution Council shall:
755 (a) develop an online asset forfeiture specialist certification course that is available to
756 all state and local prosecutors;
757 (b) certify employees who meet all course requirements as asset forfeiture specialists;
758 (c) compile the names of the employees and represented agencies into a report
759 submitted to the commission not later than April 30 of each year; and
760 (d) review and update the course each year to comply with any changes to asset
761 forfeiture law.
762 ~~[(7)]~~ (11) (a) On or before July 1 of each year, the [~~Commission on Criminal and~~
763 ~~Juvenile Justice~~] commission shall submit notice of the annual reports required in [Subsection
764 ~~(3) and Subsection (6);~~] this section in electronic format, to:
765 (i) the Utah attorney general;
766 (ii) the speaker of the House of Representatives, for referral to any House standing or
767 interim committees with oversight over law enforcement and criminal justice;
768 (iii) the president of the Senate, for referral to any Senate standing or interim
769 committees with oversight over law enforcement and criminal justice; and
770 (iv) each law enforcement agency.
771 (b) The reports described in [~~Subsection (3) and Subsection (6)~~] this section, as well as
772 the individual case data described in Subsection (1) for the previous calendar year, shall be
773 published on the Utah Open Government website at open.utah.gov on or before July 15 of each
774 year.
775 Section 13. Section **53-13-110.5** is enacted to read:
776 **53-13-110.5. Retention of records of interviews of minor children.**

777 If a peace officer or the officer's employing agency records an interview of a minor
778 child during an investigation of a violation of Section 76-5-402.1, 76-5-402.3, 76-5-403.1, or
779 76-5-404.1, the agency shall retain a copy of the recording for 18 years following the date of
780 the last recording unless the prosecuting attorney requests in writing that the recording be
781 retained for an additional period of time.

782 Section 14. Section **58-37-8** is amended to read:

783 **58-37-8. Prohibited acts -- Penalties.**

784 (1) Prohibited acts A -- Penalties and reporting:

785 (a) Except as authorized by this chapter, it is unlawful for a person to knowingly and
786 intentionally:

787 (i) produce, manufacture, or dispense, or to possess with intent to produce,
788 manufacture, or dispense, a controlled or counterfeit substance;

789 (ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or
790 arrange to distribute a controlled or counterfeit substance;

791 (iii) possess a controlled or counterfeit substance with intent to distribute; or

792 (iv) engage in a continuing criminal enterprise where:

793 (A) the person participates, directs, or engages in conduct that results in a violation of
794 Chapters 37, Utah Controlled Substances Act, 37a, Utah Drug Paraphernalia Act, 37b,
795 Imitation Controlled Substances Act, 37c, Utah Controlled Substance Precursor Act, or 37d,
796 Clandestine Drug Lab Act, that is a felony; and

797 (B) the violation is a part of a continuing series of two or more violations of Chapters
798 37, Utah Controlled Substances Act, 37a, Utah Drug Paraphernalia Act, 37b, Imitation
799 Controlled Substances Act, 37c, Utah Controlled Substance Precursor Act, or 37d, Clandestine
800 Drug Lab Act, on separate occasions that are undertaken in concert with five or more persons
801 with respect to whom the person occupies a position of organizer, supervisor, or any other
802 position of management.

803 (b) A person knowingly or intentionally in possession of money in the amount of
804 \$1,500 or more used or intended to be used to facilitate a violation of Subsection (1)(a) is
805 guilty of a third degree felony.

806 [~~(b)~~] (c) A person convicted of violating Subsection (1)(a) with respect to:

807 (i) a substance or a counterfeit of a substance classified in Schedule I or II, a controlled

808 substance analog, or gammahydroxybutyric acid as listed in Schedule III is guilty of a second
809 degree felony, punishable by imprisonment for not more than 15 years, and upon a second or
810 subsequent conviction is guilty of a first degree felony;

811 (ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or
812 marijuana, or a substance listed in Section 58-37-4.2 is guilty of a third degree felony, and
813 upon a second or subsequent conviction is guilty of a second degree felony; or

814 (iii) a substance or a counterfeit of a substance classified in Schedule V is guilty of a
815 class A misdemeanor and upon a second or subsequent conviction is guilty of a third degree
816 felony.

817 ~~(c)~~ (d) A person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii)
818 may be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier
819 of fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on the
820 person or in the person's immediate possession during the commission or in furtherance of the
821 offense, the court shall additionally sentence the person convicted for a term of one year to run
822 consecutively and not concurrently; and the court may additionally sentence the person
823 convicted for an indeterminate term not to exceed five years to run consecutively and not
824 concurrently.

825 ~~(d)~~ (e) A person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree
826 felony punishable by imprisonment for an indeterminate term of not less than seven years and
827 which may be for life. Imposition or execution of the sentence may not be suspended, and the
828 person is not eligible for probation.

829 ~~(e)~~ (f) The Administrative Office of the Courts shall report to the Division of
830 Occupational and Professional Licensing the name, case number, date of conviction, and if
831 known, the date of birth of each person convicted of violating Subsection (1)(a).

832 (2) Prohibited acts B -- Penalties and reporting:

833 (a) It is unlawful:

834 (i) for a person knowingly and intentionally to possess or use a controlled substance
835 analog or a controlled substance, unless it was obtained under a valid prescription or order,
836 directly from a practitioner while acting in the course of the person's professional practice, or as
837 otherwise authorized by this chapter;

838 (ii) for an owner, tenant, licensee, or person in control of a building, room, tenement,

839 vehicle, boat, aircraft, or other place knowingly and intentionally to permit them to be occupied
840 by persons unlawfully possessing, using, or distributing controlled substances in any of those
841 locations; or

842 (iii) for a person knowingly and intentionally to possess an altered or forged
843 prescription or written order for a controlled substance.

844 (b) A person convicted of violating Subsection (2)(a)(i) with respect to:

845 (i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree felony;

846 or

847 (ii) a substance classified in Schedule I or II, or a controlled substance analog, is guilty
848 of a class A misdemeanor on a first or second conviction, and on a third or subsequent
849 conviction is guilty of a third degree felony.

850 (c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a
851 conviction under Subsection (1)(a), that person shall be sentenced to a one degree greater
852 penalty than provided in this Subsection (2).

853 (d) A person who violates Subsection (2)(a)(i) with respect to all other controlled
854 substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in Section
855 58-37-4.2, or marijuana, is guilty of a class B misdemeanor. Upon a third conviction the
856 person is guilty of a class A misdemeanor, and upon a fourth or subsequent conviction the
857 person is guilty of a third degree felony.

858 (e) A person convicted of violating Subsection (2)(a)(i) while inside the exterior
859 boundaries of property occupied by a correctional facility as defined in Section 64-13-1 or a
860 public jail or other place of confinement shall be sentenced to a penalty one degree greater than
861 provided in Subsection (2)(b), and if the conviction is with respect to controlled substances as
862 listed in:

863 (i) Subsection (2)(b), the person may be sentenced to imprisonment for an
864 indeterminate term as provided by law, and:

865 (A) the court shall additionally sentence the person convicted to a term of one year to
866 run consecutively and not concurrently; and

867 (B) the court may additionally sentence the person convicted for an indeterminate term
868 not to exceed five years to run consecutively and not concurrently; and

869 (ii) Subsection (2)(d), the person may be sentenced to imprisonment for an

870 indeterminate term as provided by law, and the court shall additionally sentence the person
871 convicted to a term of six months to run consecutively and not concurrently.

872 (f) A person convicted of violating Subsection (2)(a)(ii) or (iii) is:

873 (i) on a first conviction, guilty of a class B misdemeanor;

874 (ii) on a second conviction, guilty of a class A misdemeanor; and

875 (iii) on a third or subsequent conviction, guilty of a third degree felony.

876 (g) A person is subject to the penalties under Subsection (2)(h) who, in an offense not
877 amounting to a violation of Section 76-5-207:

878 (i) violates Subsection (2)(a)(i) by knowingly and intentionally having in the person's
879 body any measurable amount of a controlled substance; and

880 (ii) operates a motor vehicle as defined in Section 76-5-207 in a negligent manner,
881 causing serious bodily injury as defined in Section 76-1-601 or the death of another.

882 (h) A person who violates Subsection (2)(g) by having in the person's body:

883 (i) a controlled substance classified under Schedule I, other than those described in
884 Subsection (2)(h)(ii), or a controlled substance classified under Schedule II is guilty of a second
885 degree felony;

886 (ii) marijuana, tetrahydrocannabinols, or equivalents described in Subsection
887 58-37-4(2)(a)(iii)(S) or (AA), or a substance listed in Section 58-37-4.2 is guilty of a third
888 degree felony; or

889 (iii) a controlled substance classified under Schedules III, IV, or V is guilty of a class A
890 misdemeanor.

891 (i) A person is guilty of a separate offense for each victim suffering serious bodily
892 injury or death as a result of the person's negligent driving in violation of Subsection(2)(g)
893 whether or not the injuries arise from the same episode of driving.

894 (j) The Administrative Office of the Courts shall report to the Division of Occupational
895 and Professional Licensing the name, case number, date of conviction, and if known, the date
896 of birth of each person convicted of violating Subsection (2)(a).

897 (3) Prohibited acts C -- Penalties:

898 (a) It is unlawful for a person knowingly and intentionally:

899 (i) to use in the course of the manufacture or distribution of a controlled substance a
900 license number which is fictitious, revoked, suspended, or issued to another person or, for the

901 purpose of obtaining a controlled substance, to assume the title of, or represent oneself to be, a
902 manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized
903 person;

904 (ii) to acquire or obtain possession of, to procure or attempt to procure the
905 administration of, to obtain a prescription for, to prescribe or dispense to a person known to be
906 attempting to acquire or obtain possession of, or to procure the administration of a controlled
907 substance by misrepresentation or failure by the person to disclose receiving a controlled
908 substance from another source, fraud, forgery, deception, subterfuge, alteration of a
909 prescription or written order for a controlled substance, or the use of a false name or address;

910 (iii) to make a false or forged prescription or written order for a controlled substance,
911 or to utter the same, or to alter a prescription or written order issued or written under the terms
912 of this chapter; or

913 (iv) to make, distribute, or possess a punch, die, plate, stone, or other thing designed to
914 print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or
915 device of another or any likeness of any of the foregoing upon any drug or container or labeling
916 so as to render a drug a counterfeit controlled substance.

917 (b) (i) A first or second conviction under Subsection (3)(a)(i), (ii), or (iii) is a class A
918 misdemeanor.

919 (ii) A third or subsequent conviction under Subsection (3)(a)(i), (ii), or (iii) is a third
920 degree felony.

921 (c) A violation of Subsection (3)(a)(iv) is a third degree felony.

922 (4) Prohibited acts D -- Penalties:

923 (a) Notwithstanding other provisions of this section, a person not authorized under this
924 chapter who commits any act that is unlawful under Subsection (1)(a) or Section 58-37b-4 is
925 upon conviction subject to the penalties and classifications under this Subsection (4) if the trier
926 of fact finds the act is committed:

927 (i) in a public or private elementary or secondary school or on the grounds of any of
928 those schools during the hours of 6 a.m. through 10 p.m.;

929 (ii) in a public or private vocational school or postsecondary institution or on the
930 grounds of any of those schools or institutions during the hours of 6 a.m. through 10 p.m.;

931 (iii) in or on the grounds of a preschool or child-care facility during the preschool's or

932 facility's hours of operation;

933 (iv) in a public park, amusement park, arcade, or recreation center when the public or
934 amusement park, arcade, or recreation center is open to the public;

935 (v) in or on the grounds of a house of worship as defined in Section 76-10-501;

936 (vi) in or on the grounds of a library when the library is open to the public;

937 (vii) within an area that is within 100 feet of any structure, facility, or grounds included
938 in Subsections (4)(a)(i), (ii), (iii), (iv), (v), and (vi);

939 (viii) in the presence of a person younger than 18 years of age, regardless of where the
940 act occurs; or

941 (ix) for the purpose of facilitating, arranging, or causing the transport, delivery, or
942 distribution of a substance in violation of this section to an inmate or on the grounds of a
943 correctional facility as defined in Section 76-8-311.3.

944 (b) (i) A person convicted under this Subsection (4) is guilty of a first degree felony
945 and shall be imprisoned for a term of not less than five years if the penalty that would
946 otherwise have been established but for this Subsection (4) would have been a first degree
947 felony.

948 (ii) Imposition or execution of the sentence may not be suspended, and the person is
949 not eligible for probation.

950 (c) If the classification that would otherwise have been established would have been
951 less than a first degree felony but for this Subsection (4), a person convicted under this
952 Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that
953 offense. This Subsection (4)(c) does not apply to a violation of Subsection (2)(g).

954 (d) (i) If the violation is of Subsection (4)(a)(ix):

955 (A) the person may be sentenced to imprisonment for an indeterminate term as
956 provided by law, and the court shall additionally sentence the person convicted for a term of
957 one year to run consecutively and not concurrently; and

958 (B) the court may additionally sentence the person convicted for an indeterminate term
959 not to exceed five years to run consecutively and not concurrently; and

960 (ii) the penalties under this Subsection (4)(d) apply also to a person who, acting with
961 the mental state required for the commission of an offense, directly or indirectly solicits,
962 requests, commands, coerces, encourages, or intentionally aids another person to commit a

963 violation of Subsection (4)(a)(ix).

964 (e) It is not a defense to a prosecution under this Subsection (4) that:

965 (i) the actor mistakenly believed the individual to be 18 years of age or older at the
966 time of the offense or was unaware of the individual's true age; or

967 (ii) the actor mistakenly believed that the location where the act occurred was not as
968 described in Subsection (4)(a) or was unaware that the location where the act occurred was as
969 described in Subsection (4)(a).

970 (5) A violation of this chapter for which no penalty is specified is a class B
971 misdemeanor.

972 (6) (a) For purposes of penalty enhancement under Subsections (1) and (2), a plea of
973 guilty or no contest to a violation or attempted violation of this section or a plea which is held
974 in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction,
975 even if the charge has been subsequently reduced or dismissed in accordance with the plea in
976 abeyance agreement.

977 (b) A prior conviction used for a penalty enhancement under Subsection (2) shall be a
978 conviction that is:

979 (i) from a separate criminal episode than the current charge; and

980 (ii) from a conviction that is separate from any other conviction used to enhance the
981 current charge.

982 (7) A person may be charged and sentenced for a violation of this section,
983 notwithstanding a charge and sentence for a violation of any other section of this chapter.

984 (8) (a) A penalty imposed for violation of this section is in addition to, and not in lieu
985 of, a civil or administrative penalty or sanction authorized by law.

986 (b) When a violation of this chapter violates a federal law or the law of another state,
987 conviction or acquittal under federal law or the law of another state for the same act is a bar to
988 prosecution in this state.

989 (9) In any prosecution for a violation of this chapter, evidence or proof that shows a
990 person or persons produced, manufactured, possessed, distributed, or dispensed a controlled
991 substance or substances, is prima facie evidence that the person or persons did so with
992 knowledge of the character of the substance or substances.

993 (10) This section does not prohibit a veterinarian, in good faith and in the course of the

994 veterinarian's professional practice only and not for humans, from prescribing, dispensing, or
995 administering controlled substances or from causing the substances to be administered by an
996 assistant or orderly under the veterinarian's direction and supervision.

997 (11) Civil or criminal liability may not be imposed under this section on:

998 (a) a person registered under this chapter who manufactures, distributes, or possesses
999 an imitation controlled substance for use as a placebo or investigational new drug by a
1000 registered practitioner in the ordinary course of professional practice or research; or

1001 (b) a law enforcement officer acting in the course and legitimate scope of the officer's
1002 employment.

1003 (12) (a) Civil or criminal liability may not be imposed under this section on any Indian,
1004 as defined in Section 58-37-2, who uses, possesses, or transports peyote for bona fide
1005 traditional ceremonial purposes in connection with the practice of a traditional Indian religion
1006 as defined in Section 58-37-2.

1007 (b) In a prosecution alleging violation of this section regarding peyote as defined in
1008 Section 58-37-4, it is an affirmative defense that the peyote was used, possessed, or transported
1009 by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a
1010 traditional Indian religion.

1011 (c) (i) The defendant shall provide written notice of intent to claim an affirmative
1012 defense under this Subsection (12) as soon as practicable, but not later than 10 days before
1013 trial.

1014 (ii) The notice shall include the specific claims of the affirmative defense.

1015 (iii) The court may waive the notice requirement in the interest of justice for good
1016 cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely notice.

1017 (d) The defendant shall establish the affirmative defense under this Subsection (12) by
1018 a preponderance of the evidence. If the defense is established, it is a complete defense to the
1019 charges.

1020 (13) (a) It is an affirmative defense that the person produced, possessed, or
1021 administered a controlled substance listed in Section 58-37-4.2 if the person was:

1022 (i) engaged in medical research; and

1023 (ii) a holder of a valid license to possess controlled substances under Section 58-37-6.

1024 (b) It is not a defense under Subsection (13)(a) that the person prescribed or dispensed

1025 a controlled substance listed in Section 58-37-4.2.

1026 (14) It is an affirmative defense that the person possessed, in the person's body, a
1027 controlled substance listed in Section 58-37-4.2 if:

1028 (a) the person was the subject of medical research conducted by a holder of a valid
1029 license to possess controlled substances under Section 58-37-6; and

1030 (b) the substance was administered to the person by the medical researcher.

1031 (15) The application of any increase in penalty under this section to a violation of
1032 Subsection (2)(a)(i) may not result in any greater penalty than a second degree felony. This
1033 Subsection (15) takes precedence over any conflicting provision of this section.

1034 (16) (a) It is an affirmative defense to an allegation of the commission of an offense
1035 listed in Subsection (16)(b) that the person:

1036 (i) reasonably believes that the person or another person is experiencing an overdose
1037 event due to the ingestion, injection, inhalation, or other introduction into the human body of a
1038 controlled substance or other substance;

1039 (ii) reports in good faith the overdose event to a medical provider, an emergency
1040 medical service provider as defined in Section 26-8a-102, a law enforcement officer, a 911
1041 emergency call system, or an emergency dispatch system, or the person is the subject of a
1042 report made under this Subsection (16);

1043 (iii) provides in the report under Subsection (16)(a)(ii) a functional description of the
1044 actual location of the overdose event that facilitates responding to the person experiencing the
1045 overdose event;

1046 (iv) remains at the location of the person experiencing the overdose event until a
1047 responding law enforcement officer or emergency medical service provider arrives, or remains
1048 at the medical care facility where the person experiencing an overdose event is located until a
1049 responding law enforcement officer arrives;

1050 (v) cooperates with the responding medical provider, emergency medical service
1051 provider, and law enforcement officer, including providing information regarding the person
1052 experiencing the overdose event and any substances the person may have injected, inhaled, or
1053 otherwise introduced into the person's body; and

1054 (vi) is alleged to have committed the offense in the same course of events from which
1055 the reported overdose arose.

- 1056 (b) The offenses referred to in Subsection (16)(a) are:
- 1057 (i) the possession or use of less than 16 ounces of marijuana;
- 1058 (ii) the possession or use of a scheduled or listed controlled substance other than
- 1059 marijuana; and
- 1060 (iii) any violation of Chapter 37a, Utah Drug Paraphernalia Act, or Chapter 37b,
- 1061 Imitation Controlled Substances Act.
- 1062 (c) As used in this Subsection (16) and in Section 76-3-203.11, "good faith" does not
- 1063 include seeking medical assistance under this section during the course of a law enforcement
- 1064 agency's execution of a search warrant, execution of an arrest warrant, or other lawful search.
- 1065 (17) If any provision of this chapter, or the application of any provision to any person
- 1066 or circumstances, is held invalid, the remainder of this chapter shall be given effect without the
- 1067 invalid provision or application.
- 1068 (18) A legislative body of a political subdivision may not enact an ordinance that is
- 1069 less restrictive than any provision of this chapter.
- 1070 (19) If a minor who is under 18 years of age is found by a court to have violated this
- 1071 section, the court may order the minor to complete:
- 1072 (a) a screening as defined in Section 41-6a-501;
- 1073 (b) an assessment as defined in Section 41-6a-501 if the screening indicates an
- 1074 assessment to be appropriate; and
- 1075 (c) an educational series as defined in Section 41-6a-501 or substance use disorder
- 1076 treatment as indicated by an assessment.